

IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
JAMIE URTUBIA, individually and on  
behalf of all other persons similarly situated,  
Plaintiff,

- v -

No. 11 Civ. 2901(LTS)(RLE)

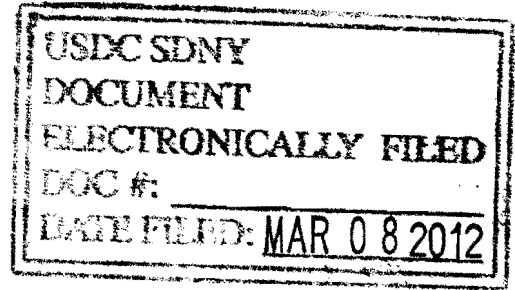
BA VICTORY CORP. and ISMAEL ALBA,  
Defendants.

-----X

ORDER

Plaintiff's Motion for Approval of Collective Action Notice and related relief is hereby granted, and furthermore:


1. The collective action notice entitled "Court-Authorized Notice of Lawsuit and Opportunity to Join" is hereby approved, with the modifications marked on Exhibits A-1 and A-2 hereto, for mailing to potential plaintiffs;
2. The collective class of potential plaintiffs in this matter shall consist of Jamie Urtubia and all current and former employees of Defendants who worked as waiters, runners, busboys or dishwashers who did not receive overtime wages for hours worked in excess of forty (40) hours per week, and/or minimum wages, at any time during the three year period immediately preceding the date of this Order; and
3. Defendants shall provide to Plaintiff, no later than ten (10) business days after the date of this Order, the names and last-known addresses of all potential plaintiffs described in paragraph 2 above. This information shall be supplied in paper form, and also digitally in one of the following formats: Microsoft Excel; Microsoft Word; or Corel WordPerfect; and
4. Plaintiffs shall mail the court-approved notice of collective action to all potential plaintiffs no later than twenty (20) days following the Defendants' disclosure of the potential plaintiffs' names and last-known addresses; and
5. If any notice to any potential plaintiff is returned as undeliverable, Plaintiff's counsel is permitted to mail the notice to such potential plaintiff again at any other address he determines is appropriate; and



6. All potential plaintiffs must opt-in by returning the executed form entitled "Consent to Become Party Plaintiff" to Plaintiff's counsel no later than sixty (65) days from the date of mailing of the collective action notice. Plaintiffs' counsel shall promptly file such executed consents with the Court and serve copies thereof on all other counsel of record.

SO ORDERED.

DATED: New York, New York  
March 8, 2012

A handwritten signature in black ink, appearing to read 'Laura Taylor Swain', is written over a horizontal line.

LAURA TAYLOR SWAIN  
United States District Judge

**Exhibit A-1**

Blacklined to show changes from original submission.

**COURT-AUTHORIZED NOTICE OF LAWSUIT  
AND OPPORTUNITY TO JOIN**

**~~UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK~~**

If you were a waiter, runner, busboy, ~~kitchen worker, delivery person~~ or dishwasher employed at the Buenos Aires Restaurant, located on East 6th Street, New York, New York, between ~~[Date to Be Determined by Court]~~ March 8, 2009, and the present,

**PLEASE READ THIS NOTICE.**

*A collective action lawsuit may affect your legal rights.*

This is a court-authorized notice. This is not a solicitation from a lawyer.

- A ~~Jamie Urtubia~~, a former employee of the Buenos Aires Restaurant, has filed a lawsuit, individually and on behalf of similarly situated employees against BA VICTORY CORP.; and ISMAEL ALBA (collectively, the ~~"Defendants"~~ "Defendants") claiming that, among other things, Defendants unlawfully failed to pay overtime wages, failed to pay minimum wages, took a ~~"tip"~~ "tip credit" paying them less than the full minimum wage, withheld a portion of their tips, and failed to pay other wages required by law.
- The lawsuit, which has been filed in the United States District Court for the Southern District of New York, is conditionally proceeding as a collective action on behalf of waiters, runners, busboys, ~~kitchen workers, delivery persons~~ and dishwashers who were employed at Buenos Aires at any time since ~~[date to be determined by the Court]~~ March 8, 2009.
- Your legal rights may be affected, and you have a choice to make now:

**YOUR LEGAL RIGHTS AND OPTIONS IN THIS LAWSUIT**

**1. YOU CAN ASK TO BE INCLUDED**

If you choose to be included in this collective action, you ~~keep~~ have the possibility of getting money or benefits that may come from a trial or a settlement in this lawsuit, but you give up any rights to separately sue the Defendants about the same legal claims in this lawsuit. If you wish to be included, you must complete the form ~~at the end of that~~ accompanies this Notice.

**2. YOU CAN DO NOTHING**

~~By doing nothing~~      If you do not return the form, you will not be included in this

collective action. —

— This means that you give up the possibility of getting money or benefits that may come from a trial or settlement of the federal claims in this lawsuit if ~~those bringing~~ the lawsuit ~~are~~is successful. You keep any rights to sue Defendants separately about the same legal claims in this lawsuit, but your time limitations period on limits for bringing your claims ~~continues to run. Each day you do not take action to protect your claims, they diminish.~~

— ~~Your options are explained in this notice.~~continue to run.

The procedure for joining this lawsuit is explained on page 5 of this Notice. To ask to be included in the lawsuit, you must act before — [insert 65 days from date notice is sent out].

If money or benefits are obtained from the Defendants, and you choose to be included in the case, you will be notified about how to ask for a share.

— This notice contains information that affects your rights. Please read it the entire Notice carefully.

## 1. Why did I get this notice?

You are getting this notice because the Defendants' records show that you work or worked at the Buenos Aires Restaurant as a waiter, runner, busser, ~~kitchen worker,~~ ~~delivery person~~ or dishwasher. A lawsuit has been brought against the Defendants claiming that they violated various provisions of federal and New York State wage and hour laws. ~~The Court is trying to determine which workers wish to participate in the case.~~ A trial may be necessary to decide whether the claims being made against the Defendants are correct. The Honorable Laura Taylor Swain, United States District ~~Court~~ Judge in the Southern District of New York, is overseeing this case. The lawsuit is known as URTUBIA v. BA VICTORY CORP., No. 11 Civ. 2901 (LTS).

## 2. What is this lawsuit about?

~~This lawsuit is about whether the Defendants' compensation practices violate federal and/or New York law.~~

This Notice gives you the opportunity to choose to join the portion of the lawsuit that is brought under federal law. The lawsuit alleges that Defendants violated federal ~~and New York~~ law by ~~(1) failing to pay overtime wages and minimum wages in accordance with the law; (2) failing to pay an extra hour of pay on days in which employees worked more than ten hours (known as "spread of hours" pay); and (3) unlawfully taking a "tip credit" and distributing a portion of employees' tips to pay tip-ineligible individuals.~~

3. The federal portion of the lawsuit has been brought as a “collective action.”

**3. What is a collective action and who is involved?**

In a collective action lawsuit, ~~one or more~~ persons who have ~~similar claims~~ a claim under the federal overtime and minimum wage laws can bring a lawsuit on behalf of others who have similar claims. ~~All~~ and, if permitted by the Court, the people who have the similar claims can join in the lawsuit. In this case, the Court has given permission for all people who worked as waiters, runners, bussers, ~~kitchen workers, delivery persons~~ and dishwashers ~~who decide to~~ at the Buenos Aires Restaurant at any time after March 8, 2009, to join in the lawsuit if they choose to do so and return the necessary form by [date 65 days after mailing of the notice]. The people who participate in the ~~case are~~ conditionally part of the “Collective” or “Collection” federal portion of the lawsuit are represented by the named plaintiff Jamie Urtubia, and are referred to as the “Collective” or “Collective” Action Members. “The workers” Mr. Urtubia, who brought this lawsuit ~~=~~ and all of the Collective Action Members ~~=~~ are also called the Plaintiffs. The corporate ~~entities~~ entity and individuals ~~s~~ that they have sued, BA Victory Corp. and Ismael Alba, are called the Defendants. One ~~C~~ court resolves the issues for everyone who decides to join the case.

**4. Why is this lawsuit a Collective Action?**

The Court has conditionally authorized this case to proceed as a collective action under § 216(b) of the federal Fair Labor Standards Act (“~~FLSA~~”“FLSA”).

**5. What is the Defendants’<sup>1</sup> position?**

~~—~~ Defendants ~~to insert~~ dispute the assertions that they violated federal wage and hour laws.

**6. Has the Court decided who is right?**

The Court has not decided whether the Defendants or the Plaintiffs are correct. By establishing the Collective and issuing the Notice, the Court is not suggesting that the Plaintiffs will win or lose the case.

**7. What are the Plaintiffs asking for?**

With respect to the federal claim to which this notice relates, Plaintiff is seeking to

recover unpaid overtime wages, minimum wages, 100% (double) liquidated damages, attorneys' fees, and costs. ~~With respect to their New York Labor Law claims (which are not covered by this notice and which Plaintiffs have not yet sought to be certified); Plaintiff is also seeking to recover withheld tips, spread-of-hours pay and 25% liquidated damages~~attorneys' fees and costs.

**8. Can I join this lawsuit?**

To be eligible to join this lawsuit, you must have worked as a waiter, runner, busboy; ~~kitchen worker, delivery person~~ or dishwasher at Buenos Aires at any time ~~since [date to be determined by the Court]~~from March 8, 2009, to the present.

**~~9. I'm still not sure if I am included.~~**

~~—~~ If you have any questions, you may contact Plaintiffs' attorneys ~~free of charge~~:

Jeanne Christensen  
Imbesi, Christensen & Michael, PC  
450 Seventh Avenue, Suite 3002  
New York, NY 10123  
Tel: (646) 380-9555  
and  
Christopher J. Gray  
Law Office of Christopher J. Gray, P.C.  
460 Park Avenue, 21st Floor  
New York, New York 10022  
Tel: (212) 838-3221  
Email: buenosariesclassaction@lawicm.com

www.lawicm.com

www.cjgraylaw.com

**Do not call or write to the Court with questions about this Notice or the lawsuit.**

**10. What happens if I do nothing at all?**

If you choose not to join this lawsuit, you will not be affected by any ruling, judgment or settlement rendered ~~in~~on the federal portion of this case, whether favorable or unfavorable. You will not be entitled to share any amounts recovered by Plaintiffs ~~as part of~~on their federal claims in this lawsuit. You also will be free to independently retain your own counsel and file your own lawsuit. You should be aware that your federal wage and hour claims are limited by a two- or three-year statute of limitations. Other time limits apply to the state law claims. Delay in joining this action, or proceeding separately, may result in part or all of your claims expiring as a matter of law. If you

proceed separately, you may also have to pay your own lawyer.

**11. What happens if I join the lawsuit?**

If you choose to join this lawsuit, you will be bound by any ruling, settlement or judgment, whether favorable or unfavorable. You will also share in any proceeds from a settlement or judgment favorable to the Collective. By joining this lawsuit, you designate the named ~~Plaintiffs~~Plaintiff, Mr. Urtubia, and ~~their~~his lawyers as your representatives; and to the fullest extent possible, you designate the named ~~Plaintiffs~~ to make decisions on your behalf concerning the case, the method and manner of conducting the case, the entering of an agreement with ~~Plaintiffs'~~' counsel regarding payment of attorneys' ' fees and court costs, the approval of settlements, and all other matters pertaining to this lawsuit. Decisions made and agreements entered into by the named ~~Plaintiffs~~ will be binding on you if you join the lawsuit. While this suit is pending, you may be asked to provide documents or information relating to your employment, or otherwise participate in written and/or oral discovery proceedings and/or in a trial of this matter.

**12. Can I participate in this lawsuit even though, due to my immigration status, I am not working at Buenos Aires legally?-**

Yes. Your immigration status does not affect your entitlement to recover back wages or to participate in this lawsuit.

**13. Can the Defendants and/or my current employer retaliate against me if I join the lawsuit?**

It is a violation of federal law for the Defendants to fire, discipline, threaten or in any manner discriminate or retaliate against you for taking part in this case.

~~If you believe that you have been penalized, discriminated against, or disciplined in any way as a result of your receiving this notification, considering whether~~ **14. Do I have a lawyer in this case?**

Text Moved Here: 1

If you choose to join this lawsuit, you will be represented by: Jeanne Christensen, Imbesi, Christensen & Michael, PC, 450 Seventh Avenue, Suite 3002, New York, NY 10123 and Christopher Gray, Law Office of Christopher J. Gray, P.C., 460 Park Avenue, 21st Floor, New York, New York 10022.

End Of Moved Text

**15. How do I ask the Court to include me in the case?**

Enclosed is a form called "Consent to Join." If you choose to join this lawsuit, discuss it is extremely important that you read, sign, and promptly return the lawsuit with others, or



~~actually joining this lawsuit, contact Plaintiffs'~~ Consent to Join form to Plaintiff's lawyers.  
The lawyers right away will file the consent forms that they receive with the Court. An  
addressed and postage-paid envelope is enclosed for your convenience.

Should the enclosed envelope be lost or misplaced, the Consent to Join Form must be sent to:

Jeanne Christensen  
Imbesi, Christensen & Michael, PC  
450 Seventh Avenue, Suite 3002  
New York, NY 10123  
Tel: (646) 380-9555  
and  
Christopher J. Gray  
Law Office of Christopher J. Gray, P.C.  
460 Park Avenue, 21st Floor  
New York, New York 10022  
Tel: (212) 838-3221

Email: [buenosariesclassaction@lawicm.com](mailto:buenosariesclassaction@lawicm.com)

**14. How do I ask the Court to include me in the case?**

Enclosed is a form called "Consent to Join." If you choose to join this lawsuit, it is extremely important that you read, sign, and promptly return the Consent to Join form. An addressed and postage-paid envelope is enclosed for your convenience. Should the enclosed envelope be lost or misplaced, the Consent to Join Form must be sent to:

Jeanne Christensen  
Imbesi, Christensen & Michael, PC  
450 Seventh Avenue, Suite 3002  
New York, NY 10123  
Tel: (646) 380-9555  
and  
Christopher J. Gray  
Law Office of Christopher J. Gray, P.C.  
460 Park Avenue, 21st Floor  
New York, New York 10022  
Tel: (212) 838-3221

You can also fax the Consent to Join form to (866) 830-7484 or (212) 937-3139  
\_\_\_\_\_ or scan and email it to [buenosariesclassaction@lawicm.com](mailto:buenosariesclassaction@lawicm.com)

**The signed Consent to Join form must be postmarked, emailed, or faxed by [65 days from mailing of this Notice].** If your signed Consent to Join Form is not postmarked,

emailed, or faxed by [65 days from mailing of the Notice], you may not be allowed to participate in the federal law portion of this lawsuit, or share in a monetary recovery on the federal law claims.

15. ~~Do I have a lawyer in this case?~~

Text Was Moved From Here. †

16. **Should I get my own lawyer?**

You do not need to hire you own lawyer because Plaintiffs' Counsel will be working on your behalf. You are allowed to hire your own lawyer at your own expense.

If you wish to ~~opt-in~~join this lawsuit but have retained your own attorney to represent you, you may ~~opt-in~~join by having your attorney file your notice of consent to join on or before [Insert the date 65 days after the date of mailing of the notice] with a notice of his or her appearance on your behalf. These documents must show the case caption and must be filed with the Clerk of Court:

Clerk of Court  
United States District Court  
Southern District of New York  
500 Pearl Street  
New York, N.Y. 10007

17. **How will the lawyers be paid?**

You will not be required to pay any attorneys' fees ~~or costs~~ out of your own pocket. The named Plaintiffs have entered into contingency fee agreements with ~~Plaintiffs'~~Plaintiff's attorneys. If you join the lawsuit and Plaintiffs do not win, there will be no attorneys' fees ~~or costs~~ chargeable to you. If there is no recovery, you may be liable for a portion of the court costs and other expenses of the litigation. In the event there is a recovery, the fee agreements entitle Plaintiffs' counsel to apply for one-third of any settlement obtained or money judgment entered in favor of all members of the class or the actual value of the time they spend on the case, whichever is greater. The Court ~~may~~must be asked to approve the attorneys' fees and will make the decisions as to whether the requested fees are reasonable and as to how much the attorneys will be paid. The fees may be part of a settlement obtained or money judgment entered in favor of Plaintiffs, or

may be ordered by the Court to be separately paid by the Defendants, or may be a combination of the two. A copy of the contingency fee agreements<sup>s</sup> executed by the named Plaintiff<sup>s</sup> may be obtained upon request from Plaintiff<sup>s</sup> Plaintiff's counsel identified above.

You may review the full text of Plaintiff<sup>s</sup> Plaintiff's Complaint and Defendants' Answer by visiting the office of the Clerk of Court for the United States District Court for the Southern District of New York, 500 Pearl Street, New York, N.Y. 10007, on any weekday between the hours of 8:30 a.m. and 4:30 p.m., and requesting the file for the case (Urtubia v. BA Victory Corp., et al., Case No. 1:11-cv-02901-LTS).

— THIS NOTICE AND ITS CONTENTS HAVE BEEN AUTHORIZED BY THE  
FEDERAL DISTRICT COURT, HONORABLE JUDGE LAURA TAYLOR  
SWAIN, THE COURT HAS TAKEN NO POSITION IN THIS CASE  
REGARDING THE MERITS OF THE PLAINTIFF'S CLAIMS OR OF THE  
— DEFENDANTS' DEFENSES.

DATED: \_\_\_\_\_, 2011 HONORABLE \_\_\_\_\_  
\_\_\_\_\_  
U.S.D.J.

March \_\_, 2012

**Exhibit A-2**

Incorporating changes from original submission.

**COURT-AUTHORIZED NOTICE OF LAWSUIT  
AND OPPORTUNITY TO JOIN**

If you were a waiter, runner, busboy or dishwasher employed at the Buenos Aires Restaurant, located on East 6th Street, New York, New York, between March 8, 2009, and the present,

**PLEASE READ THIS NOTICE.**

*A collective action lawsuit may affect your legal rights.*

This is a court-authorized notice. This is not a solicitation from a lawyer.

- Jamie Urtubia, a former employee of the Buenos Aires Restaurant, has filed a lawsuit, individually and on behalf of similarly situated employees against BA VICTORY CORP. and ISMAEL ALBA (collectively, the “Defendants”) claiming that, among other things, Defendants unlawfully failed to pay overtime wages, failed to pay minimum wages, took a “tip credit” paying them less than the full minimum wage, withheld a portion of their tips, and failed to pay other wages required by law.
- The lawsuit, which has been filed in the United States District Court for the Southern District of New York, is conditionally proceeding as a collective action on behalf of waiters, runners, busboys and dishwashers who were employed at Buenos Aires at any time since March 8, 2009.
- Your legal rights may be affected, and you have a choice to make now:

**YOUR LEGAL RIGHTS AND OPTIONS IN THIS LAWSUIT**

**1. YOU CAN ASK TO BE INCLUDED**

If you choose to be included in this collective action, you have the possibility of getting money or benefits that may come from a trial or a settlement in this lawsuit, but you give up any rights to separately sue the Defendants about the same legal claims in this lawsuit. If you wish to be included, you must complete the form that accompanies this Notice.

**2. YOU CAN DO NOTHING**

If you do not return the form, you will not be included in this collective action. This means that you give up the possibility of getting money or benefits that may come from a trial or settlement of the federal claims in this lawsuit if the lawsuit is successful. You keep any rights to sue Defendants separately about the same legal claims in this lawsuit, but your time limits for bringing your claims continue to run.

The procedure for joining this lawsuit is explained on page 5 of this Notice. To ask to be included in the lawsuit, you must act before [insert 65 days from date notice is sent out].

If money or benefits are obtained from the Defendants, and you choose to be included in the case, you will be notified about how to ask for a share.

This notice contains information that affects your rights. Please read the entire Notice carefully.

**1. Why did I get this notice?**

You are getting this notice because the Defendants' records show that you work or worked at the Buenos Aires Restaurant as a waiter, runner, busser or dishwasher. A lawsuit has been brought against the Defendants claiming that they violated various provisions of federal and New York State wage and hour laws. A trial may be necessary to decide whether the claims being made against the Defendants are correct. The Honorable Laura Taylor Swain, United States District Judge in the Southern District of New York, is overseeing this case. The lawsuit is known as URTUBIA v. BA VICTORY CORP., No. 11 Civ. 2901 (LTS).

**2. What is this lawsuit about?**

This Notice gives you the opportunity to choose to join the portion of the lawsuit that is brought under federal law. The lawsuit alleges that Defendants violated federal law by failing to pay overtime wages and minimum wages in accordance with the law. The federal portion of the lawsuit has been brought as a "collective action."

**3. What is a collective action and who is involved?**

In a collective action lawsuit, a person who has a claim under the federal overtime and minimum wage laws can bring a lawsuit on behalf of others who have similar claims and, if permitted by the Court, the people who have the similar claims can join in the lawsuit. In this case, the Court has given permission for all people who worked as waiters, runners, bussers, and dishwashers at the Buenos Aires Restaurant at any time after March 8, 2009, to join in the lawsuit if they choose to do so and return the necessary form by [date 65 days after mailing of the notice]. The people who participate in the federal portion of the lawsuit are represented by the named plaintiff Jamie Urtubia, and are referred to as the "Collective" or "Collective Action Members." Mr. Urtubia, who brought this lawsuit – and all of the Collective Action Members – are also called the Plaintiffs. The corporate entity and individual that they have sued, BA Victory Corp. and Ismael Alba, are called the Defendants. One court resolves the issues for everyone who decides to join the case.

**4. Why is this lawsuit a Collective Action?**

The Court has conditionally authorized this case to proceed as a collective action under § 216(b) of the federal Fair Labor Standards Act (“FLSA”).

**5. What is the Defendants’ position?**

Defendants dispute the assertions that they violated federal wage and hour laws.

**6. Has the Court decided who is right?**

The Court has not decided whether the Defendants or the Plaintiffs are correct. By establishing the Collective and issuing the Notice, the Court is not suggesting that the Plaintiffs will win or lose the case.

**7. What are the Plaintiffs asking for?**

With respect to the federal claim to which this notice relates, Plaintiff is seeking to recover unpaid overtime wages, minimum wages, 100% (double) liquidated damages, attorneys’ fees and costs.

**8. Can I join this lawsuit?**

To be eligible to join this lawsuit, you must have worked as a waiter, runner, busboy or dishwasher at Buenos Aires at any time from March 8, 2009, to the present.

If you have any questions, you may contact Plaintiffs’ attorneys:

Jeanne Christensen  
Imbesi, Christensen & Michael, PC  
450 Seventh Avenue, Suite 3002  
New York, NY 10123  
Tel: (646) 380-9555  
and  
Christopher J. Gray  
Law Office of Christopher J. Gray, P.C.  
460 Park Avenue, 21st Floor  
New York, New York 10022  
Tel: (212) 838-3221  
Email: buenosariesclassaction@lawicm.com  
www.lawicm.com  
www.cjgraylaw.com

**Do not call or write to the Court with questions about this Notice or the lawsuit.**

**10. What happens if I do nothing at all?**

If you choose not to join this lawsuit, you will not be affected by any ruling, judgment or settlement rendered on the federal portion of this case, whether favorable or unfavorable. You will not be entitled to share any amounts recovered by Plaintiffs on their federal claims in this lawsuit. You also will be free to independently retain your own counsel and file your own lawsuit. You should be aware that your federal wage and hour claims are limited by a two- or three-year statute of limitations. Other time limits apply to the state law claims. Delay in joining this action, or proceeding separately, may result in part or all of your claims expiring as a matter of law. If you proceed separately, you may also have to pay your own lawyer.

**11. What happens if I join the lawsuit?**

If you choose to join this lawsuit, you will be bound by any ruling, settlement or judgment, whether favorable or unfavorable. You will also share in any proceeds from a settlement or judgment favorable to the Collective. By joining this lawsuit, you designate the named Plaintiff, Mr. Urtubia, and his lawyers as your representative and, to the fullest extent possible, you designate the named Plaintiff to make decisions on your behalf concerning the case, the method and manner of conducting the case, the entering of an agreement with Plaintiffs' counsel regarding payment of attorneys' fees and court costs, the approval of settlements, and all other matters pertaining to this lawsuit. Decisions made and agreements entered into by the named Plaintiff will be binding on you if you join the lawsuit. While this suit is pending, you may be asked to provide documents or information relating to your employment, or otherwise participate in written and/or oral discovery proceedings and/or in a trial of this matter.

**12. Can I participate in this lawsuit even though, due to my immigration status, I am not working at Buenos Aires legally?**

Yes. Your immigration status does not affect your entitlement to recover back wages or to participate in this lawsuit.

**13. Can the Defendants and/or my current employer retaliate against me if I join the lawsuit?**

It is a violation of federal law for the Defendants to fire, discipline, threaten or in any manner discriminate or retaliate against you for taking part in this case.

**14. Do I have a lawyer in this case?**

If you choose to join this lawsuit, you will be represented by: Jeanne Christensen, Imbesi, Christensen & Michael, PC, 450 Seventh Avenue, Suite 3002, New York, NY 10123 and Christopher Gray, Law Office of Christopher J. Gray, P.C., 460 Park Avenue, 21st Floor, New York, New York 10022.



**15. How do I ask the Court to include me in the case?**

Enclosed is a form called "Consent to Join." If you choose to join this lawsuit, it is extremely important that you read, sign, and promptly return the Consent to Join form to Plaintiff's lawyers. The lawyers will file the consent forms that they receive with the Court. An addressed and postage-paid envelope is enclosed for your convenience. Should the enclosed envelope be lost or misplaced, the Consent to Join Form must be sent to:

Jeanne Christensen  
Imbesi, Christensen & Michael, PC  
450 Seventh Avenue, Suite 3002  
New York, NY 10123  
Tel: (646) 380-9555  
and  
Christopher J. Gray  
Law Office of Christopher J. Gray, P.C.  
460 Park Avenue, 21st Floor  
New York, New York 10022  
Tel: (212) 838-3221

You can also fax the Consent to Join form to (866) 830-7484 or (212) 937-3139 or scan and email it to [buenosariesclassaction@lawicm.com](mailto:buenosariesclassaction@lawicm.com)

**The signed Consent to Join form must be postmarked, emailed, or faxed by [65 days from mailing of this Notice].** If your signed Consent to Join Form is not postmarked, emailed, or faxed by [65 days from mailing of the Notice], you may not be allowed to participate in the federal law portion of this lawsuit, or share in a monetary recovery on the federal law claims.

**16. Should I get my own lawyer?**

You do not need to hire you own lawyer because Plaintiffs' Counsel will be working on your behalf. You are allowed to hire your own lawyer at your own expense.

If you wish to join this lawsuit but have retained your own attorney to represent you, you may join by having your attorney file your notice of consent to join on or before [Insert the date 65 days after the date of mailing of the notice] with a notice of his or her appearance on your behalf. These documents must show the case caption and must be filed with the Clerk of Court:

Clerk of Court  
United States District Court  
Southern District of New York  
500 Pearl Street  
New York, N.Y. 10007

**17. How will the lawyers be paid?**

You will not be required to pay any attorneys' fees out of your own pocket. The named Plaintiffs have entered into contingency fee agreements with Plaintiff's attorneys. If you join the lawsuit and Plaintiffs do not win, there will be no attorneys' fees chargeable to you. If there is no recovery, you may be liable for a portion of the court costs and other expenses of the litigation. In the event there is a recovery, the fee agreements entitle Plaintiffs' counsel to apply for one-third of any settlement obtained or money judgment entered in favor of all members of the class or the actual value of the time they spend on the case, whichever is greater. The Court must be asked to approve the attorneys' fees and will make the decisions as to whether the requested fees are reasonable and as to how much the attorneys will be paid. The fees may be part of a settlement obtained or money judgment entered in favor of Plaintiffs, or may be ordered by the Court to be separately paid by the Defendants, or may be a combination of the two. A copy of the contingency fee agreement executed by the named Plaintiff may be obtained upon request from Plaintiff's counsel identified above.

You may review the full text of Plaintiff's Complaint and Defendants' Answer by visiting the office of the Clerk of Court for the United States District Court for the Southern District of New York, 500 Pearl Street, New York, N.Y. 10007, on any weekday between the hours of 8:30 a.m. and 4:30 p.m., and requesting the file for the case (Urtubia v. BA Victory Corp., et al., Case No. 1:11-cv-02901-LTS).

THIS NOTICE AND ITS CONTENTS HAVE BEEN AUTHORIZED BY THE  
FEDERAL DISTRICT COURT, HONORABLE JUDGE LAURA TAYLOR SWAIN,  
THE COURT HAS TAKEN NO POSITION IN THIS CASE REGARDING THE  
MERITS OF THE PLAINTIFF'S CLAIMS OR OF THE DEFENDANTS' DEFENSES.

DATED: March \_\_, 2012